

Message Text

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E.O. 11652:GDS

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SUBJ: LETELIER/MOFFITT ASSASSINATION INVESTIGATION:
GOC AND CHILEAN SUPREME COURT STATEMENTS

1. FOLLOWING ARE TEXTS OF TWO DOCUMENTS IN ENGLISH
GIVEN TO US BY DELEGATION HEADED BY MONTERO WHICH MET
WITH ARA, JUSTICE AND FBI ON MARCH 9. TEXTS SHOULD BE
GIVEN TO ATTORNEY ETCHEBERRY FOR HIS CONSIDERATION AND
POSSIBLE COMMENT. REPORT OF MEETING WITH CHILEAN
DELEGATION FOLLOWS SEPTTEL.

2. QUOTE NON OFFICIAL TRANSLATION:

STATEMENT GIVEN BY THE ATTORNEY GENERAL TO THE SUPREME
COURT WITH REGARD TO LETTER ROGATORY NO. 17 AND DOSSIER
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NO. 20931.

THE MINISTER OF FOREIGN AFFAIRS HAS BROUGHT TO THE
ATTENTION OF YOUR EXCELLENCY THE LETTER ROGATORY OF
INTERNATIONAL JUDICIAL ASSISTANCE SENT BY THE DISTRICT
COURT OF THE UNITED STATES OF AMERICA FOR THE DISTRICT
OF COLUMBIA, REQUESTING THAT SWORN TESTIMONY BE OBTAINED

FROM JUAN WILLIAMS ROSE AND ALEJANDRO ROMERAL JARA,
RESIDING IN THIS CITY AT BUSTAMANTE NO. 24 AND MONJITAS
NO. 613, TO BE INTERROGATED IN ACCORDANCE WITH THE
TENOR OF THE QUESTIONS OR QUESTIONNAIRE ACCOMPANYING
THE LETTER ROGATORY.

PAGE 3 OF THE LETTER ROGATORY STATES TEXTUALLY:
"INASMUCH AS THIS IS AN INVESTIGATION BEING CONDUCTED
BY THE GOVERNMENT OF THE UNITED STATES, WHEREIN FEDERAL
PROSECUTORS, NOT THE COURTS, ASK THE QUESTIONS OF
WITNESSES, IT IS REQUESTED THAT THE COURT PERMIT THE
FEDERAL PROSECUTOR ASSIGNED THIS CASE, ASSISTANT UNITED
STATES ATTORNEY EUGENE M. PROPPER BE PERMITTED TO ASK
SUPPLEMENTAL QUESTIONS TO EITHER OF THESE WITNESSES
AFTER THE COURT HAS FINISHED ASKING THE QUESTIONS ON
THE ATTACHED LIST, OR PERMIT MR. PROPPER TO PROPOSE
SUPPLEMENTAL QUESTIONS FOR THE COURT TO ASK EITHER OF
THE WITNESSES."

BY RESOLUTION DATED MARCH FIRST, YOUR EXCELLENCY
GRANTED A HEARING TO THIS ATTORNEY GENERAL'S OFFICE.

ARTICLE 76 OF THE CIVIL PROCEDURAL CODE, APPLICABLE TO
PENAL LAW IN ACCORDANCE WITH ARTICLE 43 OF THE PENAL
PROCEDURAL CODE, SPECIFIES: "WHEN JUDICIAL ACTIONS
HAVE TO BE TAKEN IN A FOREIGN COUNTRY, THE RESPECTIVE
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COMMUNICATION SHOULD BE SENT TO THE OFFICIAL WHO WILL
HANDLE THE CASE THROUGH THE SUPREME COURT WHICH IN TURN
WILL SUBMIT IT TO THE MINISTRY OF FOREIGN AFFAIRS SO
THAT THIS MINISTRY CAN DISPATCH THE MATTER IN CON-
FORMANCE WITH PROCEDURES INDICATED BY TREATIES IN FORCE
OR THE GENERAL RULES ADOPTED BY THE GOVERNMENT..."; AND
THE FINAL CLAUSE ADDS: "COMMUNICATIONS RECEIVED FROM
FOREIGN COURTS WITH REGARD TO PROCEEDINGS TO BE UNDER-
TAKEN IN CHILE MUST USE THE SAME CHANNELS AND THE SAME
APPROACH."

AS THERE IS NO TREATY FOR HANDLING LETTERS ROGATORY
BETWEEN THE REPUBLICS OF CHILE AND THE UNITED STATES OF
AMERICA, THE APPLICABLE PROCEDURE IS COVERED BY THE
GENERAL RULE APPLICABLE TO JUDICIAL RELATIONS BETWEEN
COUNTRIES NOT LINKED BY TREATIES; AS HAS BEEN SAID ON
OTHER OCCASIONS, THE NORMS ARE FOUND IN THE INTER-
NATIONAL PRIVATE LAW CODE, OR THE BUSTAMANTE CODE,
APPROVED ON FEBRUARY 20, 1928 AT THE SIXTH INTERNATIONAL
CONFERENCE AT HAVANA WHICH CHILE RATIFIED ON SEPTEMBER
6, 1933.

THE FIFTH SECTION IN ARTICLES 338 TO 393 OF THE AFORE-
MENTIONED CODE DEALS WITH LETTERS OR COMMISSIONS ROGATORY.
IT IS OPPORTUNE TO TRANSCRIBE THE PROVISIONS OF ARTICLES
390 AND 391. THE FIRST STATES: "THE JUDGE WHO

RECEIVES THE LETTER ROGATORY WILL HAVE TO DECIDE ON HIS
OWN LEGAL AUTHORITY RATIONE MATERIAE WITH REGARD TO THE
MATTER ASSIGNED TO HIM"; AND THE SECOND STATES: "HE WHO
RECEIVES THE LETTER OR COMMISSION ROGATORY WILL HAVE TO
ADAPT ACCORDING TO THE OBJECTIVE OF THE LAW OF THE
COMMITMENT AND THE MANNER IN WHICH IT MUST BE CARRIED
OUT IN LINE WITH THE LAW OF HIS OWN COUNTRY".

IT CAN BE CONCLUDED FROM THE LEGAL PRECEPTS OUTLINED
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ABOVE THAT THE HANDLING AND CARRYING OUT OF THE LETTER
ROGATORY MUST ADJUST TO THE FORMALITIES, PROCEDURES AND
REQUIREMENTS SET BY THE LAWS AND PRACTICES OF THE
COUNTRY OF THE COURT RECEIVING THE LETTER ROGATORY.

NOW, WITH REGARD TO THE PRESENCE AND INTERVENTION OF
THE ASSISTANT UNITED STATES ATTORNEY MR. EUGENE M.
PROPPER IN THE INTERROGATION PROCEDURES, THE UNDERSIGNED
ATTORNEY GENERAL BELIEVES THAT THIS WOULD NOT BE
POSSIBLE DUE TO THE FACT THAT, AS ALREADY STATED, THE
ACTION IS STILL IN THE SUMMARY PHASE; ACCORDING TO OUR
LEGISLATION, WHICH IS APPLICABLE IN THIS CASE, THE JUDGE
IS CHARGED WITH CONDUCTING THE INVESTIGATION AND THE
SUMMARY IS BEHIND CLOSED DOORS. FOR THAT REASON, THE
PRESENCE AND MUCH LESS THE PARTICIPATION OF THIRD
PARTIES IN THE ACTS THAT TAKE PLACE DURING THE SUMMARY
IS NOT PERMITTED.

IN ANY CASE, IT MUST ALSO BE SAID THAT THE APPEARANCE
BEFORE CHILEAN COURTS MUST BE DONE BY LAWYERS WHO ARE
AUTHORIZED TO EXERCISE THEIR PROFESSION BY CHILE.

CONSEQUENTLY, THIS ATTORNEY IS OF THE OPINION THAT YOUR
EXCELLENCY CAN DISPATCH THE LETTER ROGATORY AND ORDER
ITS REMISSION TO THE PROPER JURISDICTION OF THE FIRST
CRIMINAL COURT OF THIS DEPARTMENT (NO. 2 OF THE AGREE-
MENT OF THE SANTIAGO COURT OF APPEALS DATED MARCH 31,
1975 ON DISPATCHING LETTERS ROGATORY EMANATING FROM
FOREIGN COURTS) IN ORDER TO CARRY OUT AND COMPLY WITH
THE PROCEDURE REQUESTED BY THE DISTRICT COURT OF THE
UNITED STATES OF AMERICA FOR THE DISTRICT OF COLUMBIA,
IN CONFORMANCE WITH THE LEGISLATION OF OUR COUNTRY.
END QUOTE.
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3. QUOTE NON OFFICIAL TRANSLATION:

RESOLUTION OF THE SUPREME COURT - MARCH 6, 1978

WITH THE REPORT OF THE ATTORNEY GENERAL AND TAKING INTO CONSIDERATION ARTICLE 76 OF THE CIVIL PROCEDURAL CODE, APPLICABLE TO THE PENAL FIELD AS ESTABLISHED IN ARTICLE 43 OF THE PENAL PROCEDURAL CODE; IN VIEW OF WHAT IS STATED IN ARTICLE 391 OF THE INTERNATIONAL PRIVATE LAW CODE (BUSTAMANTE CODE), AND THE RESOLUTION OF THE SANTIAGO COURT OF APPEALS RELATING TO THE DISTRIBUTION AND COMPLIANCE OF LETTERS ROGATORY ORIGINATING IN FOREIGN TRIBUNALS, DATED MARCH 31, 1975, THE PRESENT LETTER ROGATORY IS TO BE SENT TO THE FIRST CRIMINAL COURT OF THIS CITY FOR ITS PROMPT DISPATCH AND COMPLIANCE.

THE JUDGE MUST ALSO REACH A DECISION ON PETITIONS INCLUDED IN THE LETTER ROGATORY, IN CONFORMANCE WITH THE LAW. END QUOTE. VANCE

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